IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 28, 28-A, 28-B, 28-C,
28-D, 28-E, 28-F, 28-G & 28-H of 1992

with

WEALTH TAX REFERENCE No.32, 32-A, 32-B, 32-C,
32-D, 32-E, 32-F, 32-G & 32-H of 1992

with

WEALTH TAX REFERENCE No. 57 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

NAUTAM KANTABEN TRUST

Appearance:

1. WEALTH TAX REFERENCE No. 28 of 1992 & 32 of 1992
MS. MAUNA BHATT, Advocate for MR.M.R.BHATT for

the Revenue
Notice Served on the Respondent

2. WEALTH TAX REFERENCE NO. 57 of 1989
MR. TANVISH BHATT, Advocate for the Revenue
Notice served on the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 08/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. These three references raise the following identical question which has been referred by the Income-tax Appellate Tribunal, Ahmedabad Bench "B" for the opinion of this Court under Section 27 of the Wealth-tax Act, 1957 :

"Whether the Appellate Tribunal is right in law and on facts, in holding that the assessee trust is a specific trust assessable under Section 21(1) of the Wealth-tax Act, 1957?"

All the references relate to the Assessment Years 1969-70 to 1977-78 and they have been argued together by the learned counsel who have referred to the paper-book of Wealth Tax Reference No. 32 of 1992.

2. These references pertain to the Trust Deeds which were executed by Kantaben Lalbhai under which three trusts namely, Nautam Kantaben Trust (Reference No. 28, 28-A to 28-H of 1992), Nalinkant Kantaben Trust (Reference No.32, 32-A to 32-H) of 1992) and Nitin Kantaben Trust (Reference No. 57 of 1989) were created by settlor and funded with certain properties for the benefit of her daughters in-law and children. Under Clauses (6) and (7) of the Trust Deeds, the trustees were required to distribute the net income of the trust property in the shares specified therein between the beneficiaries. For example, in clause (6) of the Nalinkant Kantaben Trust, it was provided that, after deducting the expenses from the yearly income of the trust, one-third of the net income should be given to Bhavnaben, daughter of Nalinkant. In clause (7), there is a provision that, if in future, Nalinkant had more daughters, each of the daughters should be given half of

the share which was to be given to the wife of Nalinkant. Then there is a detailed provision in various clauses specifying the shares which were to be given, if Nalinkant had a son in future, Nalinkant had wife and daughters, if he had daughter or daughters only or if he was left without wife and children. In each such clause, the share to be given in the event contemplated is specified and there is no dispute about this fact which we also have verified from the details which are on record.

2.1 In clause (6) of the Nautam Kantaben Trust, it was provided that one-half of the income from the net income of the trust which may remain after deducting the expenses from the annual income of the trust property shall be given to Gaurav, son of Nautambhai and the remaining half of the income shall be given every year to Pannaben Nautambhai. Thus, the shares of the beneficiaries, Gaurav, who was the grand-son of the settlor and Panna, who was her daughter in-law, were specified in this clause and then in the subsequent clauses, the shares have been specified keeping in view the future possibilities of various combinations in the family of Nautambhai.

2.2 Even in Nitin Kantaben Trust, clauses 6 to 13, provided for distribution of income to the beneficiaries in the shares specifically mentioned therein.

3. A perusal of the various clauses of the Trust deeds shows the meticulous way in which the settlor has specified the shares of the beneficiaries. The trust Deed has taken care of the future by referring to various combinations that may take place due to the changes occurring in the families of the sons of the settlor, but in each such separate clause, the shares of the beneficiaries which may be existing at the relevant time are specified in no uncertain terms.

4. Under Section 21(4) of the Wealth-tax Act, as it existed at the relevant time, it was provided as under :

21. Assessment when assets are held by courts of wards, administrators-general, etc. -

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager or other person aforesaid as if the persons on whose behalf or for whose benefit the assets are held were an individual who is a citizen of India and resident in India for the purposes of this Act, and -

(a) at the rates specified in Part I of the Schedule in the case of an individual, or

(b) at the rate of one and one-half per cent,

whichever course would be more beneficial to the revenue :

xxxxx

5. It will be seen from the above provision that it would apply only when the shares of the beneficiaries are indeterminate or unknown. If the shares are indeterminate or unknown, then the wealth-tax would be levied upon the trustee as if the persons on whose behalf or for whose benefit the assets are held were an individual at the rates specified in Part I of the Schedule in the case of an individual, or at the rate of one and one-half per cent, whichever course would be more beneficial to the revenue. It was tried to be contended on the basis of clause (15) of the Trust Deeds that it had the effect of making the interest of the beneficiaries indeterminate. Under the said clause, it was provided that, in the event of the beneficiaries or anyone of them requiring moneys for education or sickness or, any other reason that the trustees may find to be sufficient, the trustees may, if they deem it fit, give such amounts from the corpus of the trust funds. This clause does not, in any manner, affect the specifications of the shares of the beneficiaries in clauses (6) to (13) of the Trust Deeds. Should any contingency of making payment under clause (15) arise due to requirement for educational or medical expenses, the trustees would, in their discretion, pay the amount from the corpus, but,

nonetheless, the net income that may continue to arise has necessarily to be distributed on the basis of the shares which are admittedly specified in clauses (6) to (13) depending upon who are the beneficiaries as on the valuation date. The question of shares of beneficiaries is altogether different from the question as to who may be the beneficiaries as on the valuation date. The settlor contemplated all the possible combinations of the persons who may be beneficiaries and has specified the shares in context of each of such combinations. If, in future, there is no variation as contemplated in the clauses, then obviously when the beneficiaries contemplated in that combination are not there, there would not be any question of that clause operating so far as the specification of shares is concerned and that would not make the specification of shares of the beneficiaries existing as on the relevant date, ineffective or indeterminate.

6. A Division Bench of this Court in Padmavati Jaykrishna Trust v. Commissioner of Wealth-tax, Gujarat, reported in 61 ITR 66, while construing the provisions of section 21(1) and 21(4) of the said Act, has held that, where the number of beneficiaries was definite and their shares were equal, there was no question of their shares being indeterminate or unknown and, consequently, the provisions of sub-section (4) of section 21 would not apply. It was held that the possibility of a variation in the constitution of the family in future was immaterial, and that the assessment would have to be made under Section 21(1) of the Act. The decision of Padmavati Jaykrishna Trust was followed in a subsequent decision of this Court in Commissioner of Wealth-tax, Gujarat II v. Arvind Narottam, reported in 102 ITR 232.

6.1 In Commissioner of Wealth-tax, Bombay v. Trustees of Mrs. Hansabai Tribhuwandas Trust, reported in 69 ITR 527 (BOM.), the Bombay High Court held that, for the purpose of applying the provisions of section 21(4) of the Wealth-tax Act to the assessment of trustees, the question whether the shares of the beneficiaries are indeterminate or unknown has to be judged as the facts stand on the "relevant date" in each assessment year. Mere fact that under the terms of the trust the beneficiaries may change on the happening of certain contingencies will not make the shares of the beneficiaries indeterminate or unknown and justify the assessment of the trustees as an individual on the entire wealth.

6.2 In Commissioner of Wealth-tax v. K.J.Somaiya

Trust, reported in 109 ITR 798, the Bombay High Court held that, in the case of assessment to wealth-tax of a trust, the possibility of the shares of the remainderman being altered by reason of subsequent events is immaterial, because, the question that arises in applying section 21 of the Wealth-tax Act, 1957, is whether the shares of the persons on whose behalf the assets are held are indeterminate or unknown with reference only to the relevant date which would be the valuation date in each case.

6.3 The decision of the Supreme Court in A.V.Reddy Trust v. Commissioner of Wealth-tax, reported in 240 ITR 409, which was relied upon by the learned counsel for the Revenue, can hardly assist the assessee, because, as is clear from the relevant terms of the Trust Deeds which are re-produced in the judgement, there was no specification of the shares of the beneficiaries at all made by the settlor and the trustee was left with a discretion to apply the whole or any portion of the income of the trust fund for the maintenance, education or advancement in life of the beneficiaries.

7. In the present case, it is clear that, in all the three Trust Deeds, the shares of the beneficiaries, who may be required to be distributed the income as on the valuation date, were specified in no uncertain terms, and therefore, it cannot be said that the shares of the beneficiaries were indeterminate or unknown.

8. For the foregoing reasons, we hold that the Tribunal was right in law and on facts in holding that the assessee trust was a specific trust assessable under Section 21(1) of the Wealth-tax Act, 1957. The question referred to us in all these references is accordingly answered in the affirmative in favour of the assessee and against the Revenue. All the references stand disposed of accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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